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A SPOTLIGHT ON UNLAWFUL ACTIVITIES PREVENTION ACT, 2019

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I. ABSTRACT

The Unlawful activities prevention act, 2019 (hereupon referred to as UAPA,2019) is an amendment to the law UAPA,1967. It gives authority to name an individual as a terrorist without due process of law. It is also known as Anti-terror law. Anyone who commits, participates, prepares, promotes, or is otherwise involved in terrorism shall be called a terrorist, and a rigorous punishment is sentenced. Moreover, it is called a draconian law by many critics, even though the main purpose of the law is to control terrorist activities, it has widely been misused by political authorities for their whims and wishes and used to suppress criticism against them.

The overview of this project provides a vivid view of this law. Initially, the historical background of this law, i.e., UAPA, 1967 is presented to provide the actual inference of the framers to draft this law. Although the UAPA is in force since 1967, the legislation decided to amend it in 2004, 2008, 2012, and 2019. In a further attempt, the amendments to the law and its changed provisions are projected, and the cause and consequences of the amended laws will be discussed. Later, a precise summary of similar laws related to terrorism and anti-terror are added, and some popular cases will be presented to support the hypothesis of the study.

The paper further encompasses the essential features of the amendment of 2019 and the elements that have given rise to amending UAPA, 2019. The major concerns and critics' condemning aspects will be analyzed by supporting them with relevant data, reports, and cases. At the end of the project, some suggested amendments to the law will be given, for better implementation of the law without being misused by the political authorities.

II. KEYWORDS

Unlawful activities, Terrorism, Detention, Rights.

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III. INTRODUCTION

UAPA, 2019 is an amended law to the unlawful activities (prevention) Act, 1967. According to this law, the Union government can designate a person as a terrorist without due process of law. It is also generally referred to as Anti-terror law. The major purpose of the law is to impose reasonable restrictions in the interests of national security and integrity. This law is introduced in the legislative assembly by the BJP-led NDA government in 2019, to control terrorist activities and safeguard national security. But the opposition referred to it as a draconian law. This law is passed by the Rajya Sabha in August 2019, after many deliberations and debates, the bill is unanimously passed after the recommendations of Union Minister Amit Shah.[2] The basic ideology behind amending the act is to resolve the pending cases at a fast phase. On the contrary, it led to the piling up of cases as it is widely misused by bureaucrats to suppress criticism. This law provides discretional powers to the centre to affirm an organization or individual as a terrorist. The seeds of the law lie in the criminal amendment act, 1908 constituted by the British Raj to subdue freedom activists, this act didn't deal with terrorist acts directly and majorly resembles Rowlett Act.

Between 2014 and 2019, 10,552 Indians were registered under UAPA according to the National crime report bureau (hereafter referred to as NCRB), but only 253 were convicted, and in 2019 itself 1,948 were arrested under UAPA, 34 persons were convicted, this comparison shows the miscarriage of justice and misuse of the law.[3] From a legal perceptive the statute infringes the basic fundamental principles under Article 19, Article 21, and Article 22. The landmark judicial precedents laid down in DK Basu, Ashok K Johari v/s State of West Bengal, State of Uttar Pradesh set forward guidelines that ought to be followed by police and authorities while arresting or detaining an individual.[4]

[2] Tietler A, 'Uapa Amendment Bill 2019: Hit Where It Hurts More' (*The Indian Philosophy*, 6 October 2019) <https://theindianphilosophy.com/uapa-2019/> accessed 23 June 2023

[3] Taneja R, 'Uapa Amendment Bill 2019: All You Need to Know about Anti-Terror Bill' (*NDTV.com*, 2 August 2019) <https://www.ndtv.com/india-news/uapa-bill-2019-all-you-need-to-know-about-anti-terror-bill-2079395> accessed 23 June 2023

[4] Pokhriyal DB and D, 'The Continuing Threat of India's Unlawful Activities Prevention Act to Free Speech' (*Jurist*, 2 June 2020) <https://www.jurist.org/commentary/2020/06/bhandari-pokhriyal-uapa-free-speech/> accessed 23 June 2023

The pending cases under UAPA like the Sidhique Kappan case, Umar Khalid's case, and others concerning UAPA. Stan Swamy's death issue and other related instances refer to the law's unconstitutionality and unethical aspects.

A. HISTORICAL BACKGROUND

The roots of the law can be traced to the colonial period, in 1908 British enacted the Criminal law amendment Act to curtail freedom fighters. Later, after independence administration decided to continue the law, but it is misused against dissenting citizens. So, the Indian judiciary held the law unconstitutional in cases- VG Row v/s State of Madras, and AK Gopalan v/s State of Maharashtra.

In 1963, during the Indo-China war to curtail regional dissidents and critics against the war, the government enacted the Unlawful Activities (Prevention) Act but it is withdrawn and later, a second draft is enacted as the Unlawful activities prevention act, 1967

B. UNLAWFUL ACTIVITIES PREVENTION ACT,1967

Association, cession, court, designated authority, order, proceeds of terrorism, terrorist group, tribunal, criminal behavior, etc. are all defined by law. Any organization may be deemed unlawful by the central government, and this declaration will remain in effect until the Tribunal has verified it in an order issued under section 4 and published in the official gazette. Anyone who commits encourages the commission of, advice, incites, or aids the association of the offenses shall be punished. Terrorist acts are committed by anybody who jeopardizes India's unity, integrity, security, or sovereignty by carrying out any activity involving explosives or bombs that kill, injure, or are likely to kill people or destroy property. The punishment shall not be less than five years but may extend to life imprisonment for life, or death.[5]

The tribunal follows a process when conducting any investigation under subsection (2) of section 4 or by the district court judge when deciding any suit is the process given in the Code of civil procedure, 1908, for the investigation of the suit. The decision of the

[5]TerroristandDisruptiveActivities(Prevention)Act,1989"<https://www.indiacode.nic.in/bitstream/123456789/15340/1/terrorist_and_disruptive.pdf.

tribunal or the judgment of the district court judge, as applicable, shall be final and correspond to the rules that are under the act.

The National Integration Council's suggestion to put acceptable limitations led to the creation of the Act. The Committee's recommendations led to the passage of the Constitution (16th Amendment) Act of 1963.[6]

IV. AMENDMENTS AND RELATED LAWS

UAPA had undergone many changes through the passage of time and many related anti-terror laws are drafted to curtail terrorism in India. Many such laws include TADA and POTA, and UAPA amended in 2004, 2008, and 2019 according to the needs of society.

A. TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT

Terrorist and disruptive activities (prevention) Act (hereafter referred to as TADA) was enacted in 1985 to counter terrorist activities in Punjab, spreading across the country. It is tentative law formulated for 2 years but extended till 1995 with the proclaiming ordinance. But within a few months, the chaos rose against the misuse of the law. Till 1994, 76,166 persons had been arrested under the law but barely, 4% of the persons trailed found guilty and many others were arrested without charges being framed against them. Later, the law is repealed but some provisions were incorporated into other laws.[7]

B. PREVENTION OF TERRORISM ACT, 2002

Prevention of terrorism act, 2002 (hereafter referred to as POTA), is a replaced law to the Prevention of terrorism ordinance, 2001, and TADA. The Indian Ministry of Home Affairs justified the ordinance(2001) passed to subdue the upsurge of terrorist activities and cross-broader terrorism, despite there being a decrease in Jammu & Kashmir. This law though helped to fight against terrorism and was considered a bold step by the government, dissidents claim it a worse than TADA.[8]

C. AMENDMENTS OF UAPA

[6] "The Unlawful Activities (Prevention) Amendment Bill, 2019" (PRS) <https://prsindia.org/.
[7]"TerroristandDisruptiveActivities(Prevention)Act,1989"<https://www.indiacode.nic.in/bitstream/123456789/15340/1/terrorist_and_disruptive.pdf.
[8] 'POTA under Challenge' (*Return to frontpage*, 13 February 2003) <https://frontline.thehindu.com/the-nation/article30215555.ece> accessed 23 June 2023

After TADA and POTA were repealed in 2004, UAPA,1967 was modified. The amended law has significant changes to the definitions of "terrorist act" and "terrorist organization" and punishments, proceeds of terrorism, and the concept of the terrorist gang, which are taken from earlier laws that had been repealed. After the shooter attacks in Mumbai, a maximum time in police detention, restrictions on bail, and imprisonment without a charge sheet were added to the UAPA, 2008 rules.[9] Section 2 of the statute criminalizes the freedom to organize an association, and the 2012 amendment adds extra uncertainty to the imprecise word "terrorist act." The standing committee objected to this provision because it gives leverage to the investigating officer and it could also lead to criminalizing raising the funds.

V. CAUSES FOR FORMULATION OF UNLAWFUL ACTIVITIES (PREVENTION) ACT, 2019 AND ITS PROVISIONS

The Unlawful Activities (Prevention) Amendment Act, 2019, was enacted by Parliament on August 2. The President swiftly authorized it on August 8th, 2019. The UAPA (Amendment) Act of 2019 includes a contentious modification that broadens the definition of "terrorists" under the Act.[10] Due to flaws in past amendments, the legislature decided to design a new amendment fit for the current situation under the Amendments Act.

A. CAUSES FOR FORMULATION OF THE ACT

The amendment's legislative purpose was essentially two-fold: first, to address various specific difficulties the acting authorities faced in dealing with "illegal" offenses under the parent act, which also involved giving the authorities more power for this purpose; and second, to further transform the parent act into an intolerable piece of legislation to combat the threat of terrorism, which is still one of the greatest dangers to people on the planet. A total of 4,431 FIRs were registered under various UAPA sections between 2016 and 2019, according to data from the National Crime Records Bureau (NCRB), with 108

[9] Tietler A, 'Uapa Amendment Bill 2019: Hit Where It Hurts More' (*The Indian Philosophy*, 6 October 2019) <https://theindianphilosophy.com/uapa-2019/> accessed 23 June 2023

[10] "The Unlawful Activities (Prevention) Amendment Bill, 2019" (PRS) <https://prsindia.org/.

of those cases ending in convictions. The government enacted certain confusing and unlawful provisions to speed up the inquiry and trial procedure.[11]

B. PROVISIONS OF UNLAWFUL ACTIVITIES (PREVENTION) ACT,2019

Union Minister, Mr. Amit Shah proposed the *Unlawful Activities (Prevention) Amendment Bill, 2019*, on July 8, 2019. This bill amends *the Unlawful Activities (Prevention) Act, 1967*. In the middle of other things, the Act sets distinct processes while dealing with terrorist attacks.

a. ***Who comes under terrorism***- By the Act, the central government can designate a group as a terrorist organization if it engages in or supports terrorism; (ii) plans or encourages terrorism; or (iii) otherwise supports terrorism. Bill also allows the government to label individuals as terrorists for the same justifications.

b. ***Approval to NIA to seize the property -***According to the Act, an investigating officer needs permission from the Director General of Police before confiscating assets that could be connected to terrorism. The Bill further stipulates that the Director General of the National Inquiry Agency (NIA) must authorize the seizure of such property if the investigation is conducted by an NIA officer.[12]

c. ***NIA investigation*** - According to the Act, investigating the issues will be carried on by officers with the rank of Deputy Superintendent, Assistant Commissioner of Police, or above. Moreover, the Bill permits NIA employees with the level of Inspector or higher to carry out investigations.

d. ***Inserting provisions in treaties*** - The Act defined terrorist operations as actions carried out by any one of the treaties listed in its schedule. The Convention to Prevent Terrorist Bombings (1997) and the Convention Against the Taking of Hostages are two of the nine treaties on the Schedule

[11] Correspondent L, 'Uapa Amendment: Respond to Pleas, Apex Court Tells Govt' (*The Hindu*, 6 September 2019) <https://www.thehindu.com/news/national/uapa-amendment-supreme-court-asks-govt-to-respond-to-pleas/article29349629.ece> accessed 23 June 2023

[12] "The Unlawful Activities (Prevention) Amendment Bill, 2019" (PRS) <https://prsindia.org/.

(1979). Bill adds a new treaty to the list of the International Convention to Prevent Nuclear Terrorism (2005).[13]

e. ***Bail and Punishment*-** UAPA has special bail conditions when a person is arrested for involving in terrorist activities. The accused cannot get bail until the magistrate finds reasonable grounds. The punishment is imprisonment not less than 5 years and which can be extended to life imprisonment.[14]

VI. CRITICISM

- ***Terrorist Act Defined Ambiguously*:** Compared to the idea advocated by the United Nations (UN) Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms in Countering Terrorism, the UAPA's definition of a "terrorist act" is very different**.** According to the Special Rapporteur, three characteristics must be present for an offense to be classified as a "terrorist act":
    - The measures employed must be lethal.
    - The act must be performed with the intent to terrorize the public or persuade the government or international organization to take a certain action or not. And
    - The purpose must be to advance an illegal goal.

In contrast, UAPA's definition of a "terrorist act" is very vague and includes damage to any property as well as the death or injury of any person.

- ***State Misuse of power***: It includes behavior that is "likely to menace" or "likely to inspire fear in people," giving the government the power to classify any activist or regular person as a terrorist even if they haven't committed any of these crimes. The state thereby affords itself additional powers in comparison to the individual liberties guaranteed by Article 21 of the constitution, as it provides the state

[13] "The Unlawful Activities (Prevention) Amendment Bill, 2019" (PRS) <https://prsindia.org/.
[14] Indulia B, Editor_4 and Ridhi, 'Unlawful Activities (Prevention) Act, 1967: Interpretation on Rigours of Grant of Bail' (*SCC Blog*, 31 December 2021) <https://www.scconline.com/blog/post/2021/12/31/unlawful-activities-prevention-act-1967-interpretation-on-rigours-of-grant-of-bail/> accessed 23 June 2023

authorities the extensive authority to detain and arrest anybody accused of terrorist involvement.[15]

- ***Section 43(D)5***; According to this part of the UAPA, police may detain a person if they have a reasonable suspicion based on solid evidence. A person would have an extremely tough time getting bail after being arrested. A person's fundamental right to bail is denied in violation of Article 21.
- ***Pending cases:*** 1,229 instances were reported in 2019, the National Crime Report Bureau reports. While the conviction percentage was 29.2% or 80 persons were found guilty and 116 were found not guilty. This demonstrates the act's abuse and infringes on the right to life of those who have been imprisoned for a protracted period while awaiting the verdict.[16]

VII. MAJOR CASES RELATED TO UNLAWFUL ACTIVITIES (PREVENTION) ACT, 2019

- **UMAR KHALID KHAN** is a human rights activist and ex-student of Jawaharlal Nehru University. In 2017, he was accused in the Bhim- Koregean case, of giving an inciting speech in Pune. He was arrested in 2020 for giving hatred speech when American former president Donald Trump visited India and there is a conspiracy that he incited the Delhi riots.[17]
- **STAN SWAMY** is a Christian priest and tribal groups activist, he is the oldest person to be arrested under terrorism, he is arrested in the Bhim-Koregean case in 2018. He s suffering from Parkinson's disease and he requested bail under medical grounds but his bail was denied and he later died in jail at the age of 84.[18]

[15] Pokhriyal DB and D, 'The Continuing Threat of India's Unlawful Activities Prevention Act to Free Speech' (*Jurist*, 2 June 2020) <https://www.jurist.org/commentary/2020/06/bhandari-pokhriyal-uapa-free-speech/> accessed 23 June 2023

[16] Taneja R, 'Uapa Amendment Bill 2019: All You Need to Know about Anti-Terror Bill' (*NDTV.com*, 2 August 2019) <https://www.ndtv.com/india-news/uapa-bill-2019-all-you-need-to-know-about-anti-terror-bill-2079395> accessed 23 June 2023

[17] Kuchay B, 'Umar Khalid: Amnesty Slams Denial of Bail to Indian Activist' (*Protests News | Al Jazeera*, 25 March 2022) <https://www.aljazeera.com/news/2022/3/25/india-amnesty-calls-denial-of-bail-to-muslim-activist-big-blow> accessed 23 June 2023

[18] 'Jailed Indian Rights Activist Stan Swamy Dead at 84 | CBC News' (*CBCnews*, 5 July 2021) <https://www.cbc.ca/news/world/india-human-rights-1.6090818> accessed 23 June 2023

- **SIDHEEQ KAPPAN** is an Indian journalist from Kerela is was arrested in 2020 for reporting the Hathras case, in which a Dalit girl is gang-raped by upper caste men. There were many protests to release him and even the International press organization expressed their concern over him.[19]
- **YASIN MALIK** is chairman of the Jammu & Kashmir Liberation Front, which is banned by the Indian government. He was arrested for killing four Unarmed Airforce officials in 1990 and for funding Kashmir Terrorism. He was sentenced to life imprisonment in 2022.[20]
- **GAUR CHAKRABORTY** is a West Bengal spokesperson for the Communist Party of India (Maoist). He was arrested in 2009 for allegedly being involved in terrorist activities and for being a member of a banned group later he was acquitted after seven years of incarceration in 2022.[21]
- **POPULAR FRONT OF INDIA** is an Islamic political organization, which was organized for Muslim minority rights and against Hindutva state and it was banned by the Indian government under UAPA in September 2022. PFI is founded in 2006 as a neo-social movement for equity and justice. It advocated for Muslim reservations.[22]

VIII. CONCLUSION AND SUGGESTIONS

The Unlawful Activities Prevention Act, 2019 is an amendment to the statute UAPA,1967. It authorizes the designation of persons as terrorists without a proper process of law. It is also known as anti-terrorism legislation. Anyone who acts, participates in, plans, encourages, or is otherwise involved in terrorism is labelled a terrorist, and harsh punishment is imposed. Furthermore, many detractors refer to it as harsh legislation,

[19] Ameen F, 'Why a Muslim Reporter in India Has Spent Nearly 150 Days in Jail' (*Freedom of the Press News | Al Jazeera*, 2 March 2021) <https://www.aljazeera.com/news/2021/3/2/why-muslim-reporter-india-has-spent-nearly-150-days-jail> accessed 23 June 2023.
[20] Andrew Clarence in Delhi & Simon Fraser in London, 'Yasin Malik: Top Kashmiri Separatist given Life in Indian Jail' (*BBC News*, 25 May 2022) <https://www.bbc.com/news/world-asia-india-61575778> accessed 23 June 2023.
[21] 'Maoist Leader Gaur Chakraborty Sent to Police Custody for 14 Days' (*Hindustan Times*, 24 June 2009) <https://www.hindustantimes.com/kolkata/maoist-leader-gaur-chakraborty-sent-to-police-custody-for-14-days/story-WKHvKE5XHaUFa1Afoo8i3M.html> accessed 23 June 2023.
[22] A JT, 'Who Are the PFI, Now Declared a Terrorist Organisation by the Govt?' (*The Indian Express*, 28 September 2022) <https://indianexpress.com/article/explained/explained-politics/popular-front-of-india-nia-raids-kerala-karnataka-explained-8165781/> accessed 23 June 2023.

even though its major objective is to regulate terrorist operations. It has been routinely exploited by political leaders for their whims and wants, as well as to stifle dissent against them.

IX. SUGGESTIONS

- The scope of the application of the law should be limited to only extreme cases in which the consequences are extreme.
- Persons who are arrested should be treated differently from other convicts and basic needs should be provided to them.
- To dispose of the pending cases special courts, need to be established and fake cases should be dismissed immediately.
- Officers who are using the provisions for illegal detention should be taken cognizant and the involved officers should be arrested.
- Restriction on Bail should be flexible and should be granted based on the requirement of the accused and not on political motives.
- Persons should not be deprived of fundamental rights.
- The term terrorist term should be defined clearly and accurately.